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*WowWee USA, Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WOWWEE GROUP LIMITED, WOWWEE  
CANADA, INC., and WOWWEE USA, INC.,  
*Plaintiffs*

v.

AAIWA ELECTRONIC TECHNOLOGY CO.,  
LTD., ABCDEFGH STORE, ACESPOWER,  
ALLWESOME STORE, ANTHNOY'S  
INTERNATIONAL TRADE, A.K.A. ANTONY  
INTERNATIONAL TRADE, BABY LOVINY  
STORE, BAY KITCHENWARES STORE,  
BEIJING FULIO TECH AND TRADING CO.,  
LTD. A/K/A FULIO, BOOKFONG DOUDOU  
STORE, BUSTRIEND STORE, HCY SCIENCE  
AND TECHNOLOGY LTD. A/K/A HCY  
BONG HIGH CLUB, CIXI CITY MAYEE  
ELECTRIC APPLIANCE CO., LTD.,  
DAVIDHE STORE, DONGGUAN EREALER  
ELECTRONIC TECHNOLOGY CO., LTD.  
A/K/A EREALER INDUSTRIAL  
(HONGKONG) CO., LIMITED, DONGGUAN  
INGLEBY MECHANICAL EQUIPMENT CO.,  
LTD , DONGGUAN MUSHANG  
SILICONE&PLASTIC PRODUCTS CO., LTD.,  
DONGGUAN SEORY DECO CO., LTD. ,

Civil Action No. 17-cv-7969 (RWS)

**REPLY MEMORANDUM OF LAW  
IN FURTHER SUPPORT OF  
PLAINTIFFS' 1) APPLICATION  
FOR A TEMPORARY  
RESTRAINING ORDER; 2) AN  
ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE; 3) ASSET  
RESTRAINING ORDER; 4) ORDER  
AUTHORIZING ALTERNATIVE  
SERVICE BY ELECTRONIC  
MEANS AND 5) ORDER  
AUTHORIZING EXPEDITED  
DISCOVERY**

DONGGUAN YUYANG MUSICAL  
INSTRUMENT CO., LTD. A/K/A MAGNA  
UKELELE GUITAR, E\_SHOP2008 A/K/A  
SHEN ZHEN, EBUY360 OUTLET STORE,  
ECIGMOD, EDC HAND SPIN STORE,  
EIFFELBRIDE, FIDGET SPINNERS STORE,  
FINGER\_MONKEY\_DHGate, FUZHOU  
JOINTOP IMP. & EXP. CO., LTD. A/K/A  
JOINTOP, GUANGZHOU HANG SHENG  
TECHNOLOGY CO., LTD. , GUNTOY  
STORE, HEFEI SUNHOPE TRADE CO.,  
LIMITED, HONG JING BUSINESS, HT  
BOUTIQUE TOY STORE, JINJIANG  
HUIHAO HARDWARE CO., LTD. A/K/A  
JINJIANG HUIHAO HARDWARE PLASTIC  
HANDICRAFT CO., LTD., JOA STORE,  
KID&LOVE STORE A/K/A KIDS & LOVE ,  
KUAILEMENG'S TOY WORLD STORE,  
KYSHADOW A/K/A CRYSTAL  
KYSHADOW, LEADINGSTAR RC TOY  
STORE, LM TOY STORE,  
MAGIC\_PARADISE, MY TOY WORLD,  
NANJING BABYTOP INTERNATIONAL  
TRADING CO., LTD., NINGBO TOPTEN  
INDUSTRY CO., LTD., ONLINE STORE  
236134, OUTDOORCLUBS, PETREL GOO,  
PLEASURE SHOPPING BLOCKS TOY  
STORE, QINGDAO CLUNT BEARING CO.,  
LTD., SAMANTHALEE STORE, SESAME  
TOY STORE, SHAANXI KEYSUN BIO-TECH  
CO., LTD. A/K/A KAI CHENG INDUSTRIAL  
CO., LIMITED, SHANGHAI RONDY TOYS  
CO., LTD., SHANGHAI2010, SHANTOU  
CHENGHAI GUANGYI MEIJIN PLASTIC  
TOYS FACTORY, SHENZHEN AIDAR  
TRADING CO., LTD., SHENZHEN  
ANTHOME TECHNOLOGY CO., LTD.,  
SHENZHEN ARES TECHNOLOGY LIMITED,  
SHENZHEN ASPERO TECHNOLOGY CO.,  
LTD., SHENZHEN ATOY TECHNOLOGY  
CO., LTD., SHENZHEN BAIYI  
TECHNOLOGY CO., LTD., SHENZHEN  
BAOLIFENG OPTO-ELEC CO., LTD.,  
SHENZHEN BETTER NEW GIFT DESIGN  
DEPT. A/K/A SZ BETTER LIMITED,  
SHENZHEN BO XIN RONG TECHNOLOGY

CO., LTD., SHENZHEN BOLT INNOVATION  
TECHNOLOGY CO., LTD., SHENZHEN  
CHUNBELL ELECTRONIC CO., LTD.,  
SHENZHEN CITY SYART TRADE  
COMPANY LTD., SHENZHEN CO-  
FRIENDSHIP TRADING CO., LTD.,  
SHENZHEN DST TECH CO., LTD.,  
SHENZHEN EASYSMOKS TECHNOLOGY  
CO., LTD., SHENZHEN EUNION  
TECHNOLOGY CO., LTD., SHENZHEN  
FAVORITE TECHNOLOGY CO., LTD.,  
SHENZHEN FIRE-WOLF ELECTRONICS  
CO., LTD., SHENZHEN FIVE STAR  
TRADING CO., LTD., SHENZHEN GARUDA  
TECHNOLOGY LIMITED A/K/A GARUDA  
GROUP , SHENZHEN GDC TILLWELL  
TECHNOLOGY LTD., SHENZHEN GOLD  
COST TECHNOLOGY CO., LTD.,  
SHENZHEN GOOKY TECHNOLOGY CO.,  
LTD., SHENZHEN GOWELL TECHNOLOGY  
CO., LTD. (G-WIRELESS), SHENZHEN  
HANBETER TECHNOLOGY CO., LTD. ,  
SHENZHEN HENGFULONG TECHNOLOGY  
CO., LTD., SHENZHEN HI FORTUNE  
TECHNOLOGY CO., LTD., SHENZHEN  
HIPER SONG ELECTRONIC TECHNOLOGY  
CO., LTD., SHENZHEN HLS ELECTRONIC  
TECHNOLOGY LIMITED, SHENZHEN  
HONGTAIDINGYE ELECTRONICS CO.,  
LTD. , SHENZHEN ISM TECHNOLOGY CO.,  
LTD., SHENZHEN IWELLGLOBAL  
TECHNOLOGY CO., LTD., SHENZHEN  
JIEDAKE TECHNOLOGY CO., LTD.,  
SHENZHEN JIJIALASI INDUSTRIAL CO.,  
LTD., SHENZHEN JINGXIN  
SCIENCE&TECHNOLOGY DEVELOPMENT  
CO., LTD., SHENZHEN JINPIN BALANCE  
TECHNOLOGY CO., LTD, SHENZHEN  
JOYSTAR ELECTRONICS CO., LTD.,  
SHENZHEN JUTUO SUPPLY CHAIN CO.,  
LTD., SHENZHEN JXK TECHNOLOGY CO.,  
LTD, SHENZHEN KAREN M ELECTRONICS  
CO., LTD., SHENZHEN KARISIN  
IMPORT&EXPORT CO., LTD., SHENZHEN  
KINGSWAY TECHNOLOGY CO., LTD. ,  
SHENZHEN KISN TECHNOLOGY CO.,

LIMITED., SHENZHEN LANYOS  
INTELLIGENT TECHNOLOGY CO.,LTD,  
SHENZHEN LCOSE ELECTRONIC  
TECHNOLOGY CO., LTD., SHENZHEN  
LEADINGPLUS ELECTRONIC CO., LTD.,  
SHENZHEN LEYI INDUSTRIAL CO., LTD.,  
SHENZHEN LIPENGDA CULTURAL GIFT  
CO., LTD., SHENZHEN LISTING  
TECHNOLOGY CO., LTD., SHENZHEN  
LONG SHENG CENTURY TECHNOLOGY  
CO., LTD., SHENZHEN MYTASTE RJX  
HARDWARE CO., LTD, SHENZHEN  
NAVATA TECHNOLOGY CO., LTD.,  
SHENZHEN NEW IMAGE TECHNOLOGY  
CO., LTD , SHENZHEN OREBO  
TECHNOLOGIES LTD., SHENZHEN  
ORHONG ELECTRONIC TECHNOLOGY  
CO., LTD., SHENZHEN QIO TECHNOLOGY  
CO., LTD., SHENZHEN QUEST  
TECHNOLOGY CO., LTD., SHENZHEN  
SHENYUAN TECH CO., LTD., SHENZHEN  
SKYVIEW TECHNOLOGY LIMITED,  
SHENZHEN SMOFIT TECHNOLOGY CO.,  
LTD., SHENZHEN SPDAK TECHNOLOGY  
COMPANY LIMITED, SHENZHEN SPRI  
TECHNOLOGY CO., LTD., SHENZHEN  
SUNFIRE TECHNOLOGY CO., LTD.,  
SHENZHEN TECHNOLI TECHNOLOGY CO.,  
LTD., SHENZHEN USMART ELECTRONICS  
TECHNOLOGY CO., LTD. , SHENZHEN  
VCEEGO TECHNOLOGY CO., LTD.,  
SHENZHEN VFOCUS ELECTRONIC  
TECHNOLOGY R&D CO., LTD., SHENZHEN  
V-VISION TECHNOLOGY CO., LTD.,  
SHENZHEN WELLCORE TECHNOLOGY  
CO., LTD., SHENZHEN WOW GIFT CO.,  
LTD., SHENZHEN XINGAOSHENG  
TECHNOLOGY CO., LTD., SHENZHEN  
XINHAOYUAN TECHNOLOGY CO., LTD.  
SHENZHEN XZD TECHNOLOGY CO., LTD.,  
SHENZHEN YUWAY TECHNOLOGY CO.,  
LTD. , SHENZHEN Z-COOL TIMES  
TECHNOLOGY CO., LTD., SHENZHEN  
ZMART TECHNOLOGY CO., LTD.,  
SHENZHEN ZOOMING ELECTRONIC CO.,  
LTD., AIPIN STORE, SHOP2949193 STORE,

SHOP319037 STORE, STEPHAN STORE  
STORE, HONG KONG SUPERFAST  
TECHNOLOGY CO. LTD. A/K/A  
SUPERFAST, SUPERGLOBAL, SUZHOU LN  
PROMO CO., LTD., SUZHOU  
SWEETDRESSES WEDDINGDRESS CO.  
LTD. A/K/A SWEETDRESSES, SHENZHEN  
CITY POLY HUI FOREIGN TRADE CO.,  
LTD. A/K/A SZ\_ST\_LUO, SZALONE1, TEEM  
TECHNOLOGY CO., LTD. A/K/A SQUISHIES  
THEA STORE, TUKIIE STORE, TUMI  
OFFICIAL STORE, TUMIPETLIFE STORE,  
XIAMEN JIAYIKANG ENVIRONMENTAL  
TECHNOLOGY CO., LTD., XIAMEN  
WINDSAIL, OUTDOOR GEAR & SPORTING  
GOODS CO., LTD., SHENZHEN BITIAN  
TECHNOLOGY LTD., XQBOSS STORE,  
YIWU BRIOSTA APPARELS FACTORY,  
YIWU CONA SPORTS CO., LTD., YIWU ECO  
BAOYU E-BUSINESS FIRM, YIWU GREEN  
SHINE ARTS & CRAFTS CO., LTD. , YIWU  
GREEN SHINE GIFTS AND TOYS CO., LTD.,  
YIWU HUI ZHE TRADING CO., LTD., YIWU  
KUOTAI TRADING CO., LTD., YIWU  
RUIMIAN E-COMMERCE TRADING FIRM,  
AND ZHIMEI ONLINE A/K/A  
ZHIYUANWEDDING,

*Defendants*

## **I. PRELIMINARY STATEMENT**

Plaintiffs WowWee Group Limited, WowWee Canada, Inc. and WowWee USA, Inc. (“WowWee” or “Plaintiffs”) submit this memorandum of law in further support of their *ex parte*<sup>1</sup> application for an order to show cause why a preliminary injunction, inclusive of an asset restraining order, should not issue against above-referenced Defendants (and more completely identified in Paragraphs 8 through 162 of the Complaint) in light of Defendants’ intentional and willful offering for sale and/or sales of Counterfeit Products (“Application”).<sup>2</sup>

This lawsuit involves the rampant counterfeiting of Fingerling Products, which are hand-held robotic toys designed to look like, for example, monkeys, unicorns and sloths. They are wildly popular and widely recognized as the must-have toy product for 2017, as indicated by the toy industry’s leaders and major news outlets. Notably, Fingerlings Products are marketed at children as young as five. The popularity and demand for the Fingerlings Products are only increasing during the holiday season.

## **II. PROCEDURAL HISTORY**

On October 17, 2017, Hon. Paul A. Crotty entered an Order granting Plaintiffs’ Application to file the action under seal. *See* Dkt. 1. Also on October 17, 2017, the Court entered an Order granting Plaintiffs’ Application (“October 17, 2017 Order”). *See* Dkt. 21. As per the terms of the October 17, 2017 Order, the Order to Show Cause Hearing was scheduled for October 25, 2017, Defendants’ opposing papers were due on or before October 23, 2017 and Plaintiffs’ reply papers were due on or before October 24, 2017. On October 18, 2017, the Court So-Ordered Plaintiffs request that the Order to Show Cause Hearing be adjourned until November 1, 2017. *See* Dkt. 22.

On November 1, 2017, Plaintiffs appeared before the Court for the Order to Show Cause

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<sup>1</sup> On November 2, 2017, the Court entered an Order unsealing this matter. *See* Dkt. 5.

<sup>2</sup> If a defined term is not defined within, please refer to the definitions included in the Application or Complaint.

Hearing. On the same day, November 1, 2017, the Court entered an Order Extending the Temporary Restraining Order and Adjourning the Order to Show Cause Hearing (“November 1, 2017 Order”). *See* Dkt. 6. As per the November 1, 2017 Order, the Order to Show Cause Hearing was adjourned until November 15, 2017 at 11:00 a.m. *See id.*

On November 13, 2017, Defendant Ebuy360 Outlet Store, Defendant Shenzhen Bolt Innovation Technology Co., Ltd., Defendant Shenzhen Listing Technology Co., Ltd., Defendant Shop2949193 Store, Defendant Bustriend Store, Defendant TUMI Official Store/TUMIpetlife and Defendant Anthony's International Trade (collectively, “Moving Defendants”) filed a Cross Motion to Dismiss Plaintiffs’ Complaint and Order to Show Cause and Opposition to Plaintiffs’ Order to Show Cause (“Moving Defendants’ Motion”). *See* Dkt. 26.

Here, Plaintiffs specifically address Moving Defendants’ Opposition<sup>3</sup> and respectfully request that the October 17, 2017 Order be converted into a Preliminary Injunction inclusive of an asset restraining order.

**III. PLAINTIFFS HAVE ESTABLISHED THAT THEY WILL SUFFER  
IRREPARABLE HARM IN THE ABSENCE OF AN INJUNCTION AND  
THAT THEY ARE ENTITLED TO AN PRE-JUDGMENT ASSET FREEZE  
ORDER PRVENTING THE FRADULANT TRANSFER OF ASSETS**

In their Opposition, Moving Defendants erroneously argue, without providing any support, that Plaintiffs are not entitled to an asset freeze because the balance of hardships weighs in their favor and because Plaintiffs’ can be “recompensed by a monetary award.” Plaintiffs, however, have established through declarations supported by evidence that Moving Defendants’ offering for sale and sale of substandard Counterfeit Products, which are virtually indistinguishable from Plaintiffs’ Fingerlings Products and/or which bear marks and/or works which are identical or confusingly or substantially similar to Plaintiffs’ Fingerlings Marks and

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<sup>3</sup> The Court granted Plaintiffs’ request for an extension of time to oppose Moving Defendants’ dispositive motion to dismiss pursuant to F.R.C.P. 12(b)(5). *See* Dkt. 27.

Fingerlings Works, in wholesale quantities, at significantly below-market prices has caused, and will continue to cause, Plaintiffs irreparable injury in the form of lost sales, loss of pricing power, loss of quality control, loss of control of its reputation and potential exposure to legal liability for any injury to consumers, who are notably young children, from using Counterfeit Products, none of which are compensable by money damages alone. *See generally* Yanofsky Dec. and Brennan Dec.

Accordingly, since the “standards which govern consideration of an application for a temporary restraining order . . . are the same standards as those which govern a preliminary injunction,” (*Local 1814, Int’l Longshoremen’s Ass’n v. N.Y. Shipping Ass’n, Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992); *see also Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008)), and Plaintiffs have met these standards, they respectfully submit that a preliminary injunction should issue at this time.

**A. Plaintiffs Have Unequivocally Demonstrated Irreparable Harm and That the Balance of Hardships Tips in Their Favor**

Moving Defendants have failed to set forth any evidence whatsoever to rebut Plaintiffs’ demonstration that they have already suffered considerable irreparable harm to their business, the reputation and goodwill that they have developed in the Fingerlings Marks and Fingerlings Works, which they will continue to suffer should Moving Defendants be permitted to continue operating their infringing and illegal businesses. Here, Plaintiffs have clearly identified the hardships that they will face in the absence of the Preliminary Injunction which contains an asset freeze order, including: 1) the destruction of the inherent value of Plaintiffs’ Fingerlings Products; 2) the impairment of Plaintiffs’ reputation for providing quality products; 3) the dilution of Plaintiffs’ brand and goodwill; 4) the negative impact on Plaintiffs’ relationships with its business partners and current customers; 5) Plaintiffs’ loss of control over the reputation of its



Fingerlings Products and 6) the denial of Plaintiffs' fundamental rights to control the quality of the goods sold under its Fingerlings Marks. *See generally* Yanofsky Dec. and Brennan Dec.

Moving Defendants' bald assertions that the balance of hardships clearly tips in favor of Moving Defendants is highly specious. Wrongly, Moving Defendants contend that they cannot engage in any online transactions involving their frozen accounts. Furthermore, and without providing any evidence to the contrary, Moving Defendants assert that their User Accounts did not offer for sale and/or sell Counterfeit Products. Nevertheless, the evidence attached as Exhibit D to the Complaint clearly demonstrates that all Defendants, including Moving Defendants, offered for sale and/or sold Counterfeit Products. The assets restrained pursuant to the TRO, and which Plaintiffs respectfully request continue to be restrained, are directly related to the User Accounts through which Moving Defendants offered for sale and/or sold Counterfeit Products. Simply put, Moving Defendants additional bank accounts were not frozen pursuant to the TRO and they are free to conduct business with those assets. While it is true that the Court has the power to "exempt any particular assets from the freeze on the ground that they [are] not linked to the profits of the allegedly illegal activity," the burden is on the party seeking relief to "present documentary proof that particular assets [are] not the proceeds of counterfeiting activities." *See N. Face Apparel Corp.*, 2006 U.S. Dist. LEXIS 14226, at \*11 (quoting *Cartier Int'l B.V. v. Liu*, 2003 U.S. Dist. LEXIS 6381, at \*1 (S.D.N.Y. 2003)). In the Second Circuit, courts have found that "[a] willful infringer should not be able to unilaterally limit a damages award by unsubstantiated states of the fruits of her infringement." *Coach, Inc.*, 2012 U.S. Dist. LEXIS 52565, at \*8 – 9. The proof Moving Defendants must put forth is to be specific in nature, such as sales records. *See generally Klipsch Group, Inc. v. Big Box Store Ltd.*, 2012 U.S. Dist. LEXIS 149507, at \*6-9 (S.D.N.Y. 2012). As Moving Defendants acknowledge, they have not provided

documentary evidence showing that the assets frozen are not the result of the sale of Counterfeit Products. Therefore, they have failed to meet their burden and Plaintiffs respectfully submit that a preliminary injunction including an asset restraint order is appropriate and necessary at this time.

Plaintiff is further and irreparably harmed by sellers who offer and insert counterfeit goods into the marketplace. “[T]he public has an interest in not being deceived—in being assured that the mark it associates with a product is not attached to goods of unknown origin and quality.” *Diesel S.P.A. v. Does*, 2016 WL 96171, at \*10 (S.D.N.Y. Jan. 8, 2016). Here, the issuance of a preliminary injunction is absolutely critical because the Counterfeit Products offered for sale and/or sold by all Defendants – including Moving Defendants – pose serious hazards to children. Plaintiffs have demonstrated that such counterfeiting and infringing activities have caused Plaintiffs irreparable injury in the form of unquantifiable lost sales, loss of goodwill, loss of pricing power and loss of control of its reputation with licensees, retailers and consumers, as well as Plaintiffs’ potential exposure to legal liability for any injury to consumers that may result from use of Moving Defendants’ substandard Counterfeit Products, none of which are compensable by money damages alone. Plaintiffs further demonstrated that Moving Defendants’ actions also caused Plaintiffs to lose control over the reputation of Plaintiffs’ Fingerlings Marks, as well as the fundamental right to control the quality of the goods sold under Plaintiffs’ Fingerlings Marks. Accordingly, Plaintiffs respectfully submit that the issuance of a preliminary injunction is necessary and appropriate.

**B. The Court Should Exercise its Inherent Equitable Authority to Freeze Defendants’ Assets**

Plaintiffs submit that as part of a preliminary injunction, an asset freeze order remains necessary and proper in the instant matter, including against Moving Defendants. District Courts

have the inherent equitable authority to freeze assets, where, as here, the plaintiff asserts a claim for final *equitable* relief, “and the preliminary injunction is ancillary to the final relief.” See *Gucci Am. v. Bank of China*, 768 F.3d 122, 130-31 (2d Cir. 2014) (citing *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)). In *Gucci Am. Inc. v. Bank of China*, the Second Circuit expressly affirmed the Court’s authority to freeze counterfeiters’ assets “in favor of plaintiffs seeking an accounting against allegedly infringing defendants in Lanham Act cases,” whether such assets are located in the United States or abroad, and “impos[ed] on a defendant the obligation to disclose and return profits.” 768 F.3d 122, 131 (2d Cir. 2014); see also *Balenciaga Am., Inc. v. Dollinger*, 2010 U.S. Dist. LEXIS 107733, at \*23-24 (S.D.N.Y. 2010); see also, e.g., *Tiffany (NJ) LLC v. Forbse*, 2012 U.S. Dist. LEXIS 72148, at \*35 (S.D.N.Y. 2012); *Wishnatzki & Nathel, Inc. v. H.P. Island-Wide, Inc.*, 2000 U.S. Dist. LEXIS 15664 (S.D.N.Y. 2000); *Int’l Star Class Yacht Racing Ass’n v. Tommy Hilfiger U.S.A., Inc.*, 164 F.3d 656 (2d Cir. 1998) and *George Basch Co., Inc. v. Blue Coral, Inc.*, 968 F.2d 1532 (2d Cir. 1996). Here, Plaintiffs’ Complaint requests (1) an award of Defendants’ profits pursuant to 15 U.S.C. § 1117(a), and (2) complete accountings for any and all monies, profits, gains and advantages derived by Defendants from their infringing and/or counterfeiting activities. The Lanham Act specifically entitles a plaintiff who establishes a violation of its rights in connection with a registered trademark, “subject to the principles of *equity*, to recover . . . defendant's profits.” 15 U.S.C. § 1117(a) (emphasis added).

A key component of a Court’s determination to issue a freeze on a defendant’s assets is the consideration that a defendant might hide their illegal ill-gotten funds if their assets were not frozen. See *Reebok Int’l, Ltd. v. Marnatech Enterprises, Inc.*, 737 F. Supp. 1521, 1527 (S.D. Cal. 1990). Courts generally have accepted that counterfeiters engaged in activities similar

and/or identical to those of Moving Defendants are likely to secret their funds gained as a result of the sale of counterfeit goods in order to prevent them from being used to satisfy a judgment. In their Opposition, Moving Defendants fail to account for Plaintiffs' well-founded fear that the assets in the accounts affected by the TRO's asset restraining order are Moving Defendants' only funds and accounts and/or that the businesses Plaintiffs have thus far identified are Moving Defendants' only businesses. The Lanham Act provides that at any time before final judgment is rendered, a trademark owner may elect to recover an award of statutory damages rather than actual damages for the use of a counterfeit mark in connection with goods or services in the amount of: 1) "not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just," or 2) if the use of the counterfeit mark is found to be willful, up to "\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c). Similarly, Section 504(c) of the Copyright Act allows a plaintiff to elect either statutory damages or actual damages for copyright infringement. A copyright owner may elect statutory damages in the amount of "not less than \$750 or more than \$30,000 as the court considers just" with respect to any one work. 17 U.S.C.A. § 504(c)(1).<sup>4</sup> Alternatively, where a court finds willful infringement, "the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000.00." 17 U.S.C. § 504(c)(2). Here, the assets currently frozen pursuant to the TRO are woefully insufficient to satisfy any potential judgment of statutory

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<sup>4</sup> Plaintiffs respectfully submit that an award of \$50,000.00 for each Defendants' willful violation of either Act or both Acts is appropriate under the circumstances of this case and the Court has made similar awards in the past. *See, e.g., Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbaby Factory, et al.*, No. 17-cv-1840-KPF (S.D.N.Y. Sept. 13, 2017) Dkt. 65 and *Ontel Products Corp. v. Airbrushpainting Makeup Store, et al.*, No. 17-cv-871-KBF (S.D.N.Y. June 30, 2017) Dkt. 41

damages to which Plaintiffs may be entitled to pursuant to 15 U.S.C. § 1117(c) and/or 17 U.S.C. § 504(c) against each Moving Defendant.<sup>5</sup>

Consequently, Plaintiffs respectfully submit that the Court, as it previously has done in similar instances, enter a preliminary injunction which extends the asset freeze included in the TRO because under 15 U.S.C. § 1117(a) and 17 U.S.C. § 504(b), a plaintiff in an action arising thereunder is entitled to recover a defendant's profits derived from the counterfeiting and/or infringement and/or plaintiff's damages. *See, e.g., Allstar Marketing Group, LLC v. GB Housewear Store, et al.*, No. 17-cv-7596-SHS, Dkt. 22 (S.D.N.Y. Oct. 12, 2017); *Spin Master Ltd. and Spin Master, Inc. v. Alan Yuan's Store, et al.*, No. 17-cv-7422-DLC, Dkt. 19. (S.D.N.Y. Sept. 28, 2017); *Spin Master Ltd. and Spin Master, Inc. v. Amy & Benton Toys and Gifts Co., Ltd., et al.*, No. 17-cv-5845-VSB, Dkt. 17 (S.D.N.Y. Aug. 4, 2017); *Ontel Products Corp. v. Auto Mall et al.*, No. 17-cv-5190-AT, Dkt. 6 (S.D.N.Y. July 18, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Best Baby and Kid Store, et al.*, No. 17-cv-4884-KPF, Dkt. 3 (S.D.N.Y. June 28, 2017); *Ideavillage Products Corp. v. chinafocus et al.*, No. 17-cv-3894-RA, Dkt. 19 (S.D.N.Y. May 24, 2017); *Moose Toys Pty LTD et al. v. Guangzhou Junwei Trading Company d/b/a Backgroundshop et al.*, No. 17-cv-2561-LAK, Dkt. 12 (S.D.N.Y. May 11, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbaby\_factory et al.*, No. 17-cv-1840-KPF, Dkt. 11 (S.D.N.Y. March 27, 2017); *Ontel Products Corporation v. Airbrushpainting Makeup Store a/k/a Airbrushespainting et al.*, No. 17-cv-871-KBF, Dkt. 20 (S.D.N.Y. Feb. 6, 2017) and *Ideavillage Products Corp. v. Bling Boutique Store, et al.*, No. 1:16-cv-09039-KMW, Dkt. 3 (S.D.N.Y. Dec. 8, 2016).

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<sup>5</sup> Pursuant to the TRO, the following assets have been restrained, totaling \$15,765.64 between all seven Moving Defendants: Defendant Ebuy360 Outlet Store: \$523.74; Defendant Shenzhen Bolt Innovation Technology Co., Ltd.: \$259.70; Defendant Shenzhen Listing Technology Co., Ltd.: \$1,171.04; Defendant Shop2949193 Store: \$8,425.88; Defendant Bustriend Store: \$2,013.52; Defendant TUMI Official Store/TUMIpetlife: \$1,614.04 and Defendant Anthony's International Trade: \$1,757.72.

#### IV. CONCLUSION

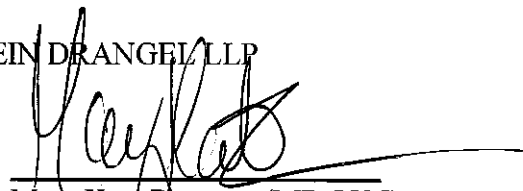
For the reasons set forth above, Plaintiffs respectfully request that a Preliminary Injunction be entered which includes an order preventing the fraudulent transfer of assets.

Dated: November 14, 2017

Respectfully submitted,

EPSTEIN DRANGEL LLP

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